

Remarks:

In the Office Action dated July 21, 2008, claims 1, 8, 9, and 15-32, in the above-identified U.S. patent application were rejected. Reconsideration of the rejections is respectfully requested in view of the above amendments and the following remarks. Claims 1, 8, 9, 23 and 26-32 remain in this application, claims 2-7, 10-22 and 24-25 have been canceled and new claim 33 has been added to the application.

The applicants thank the examiner for the interview on August 28, 2008. The above amendments are the amendments which were discussed during the interview. The following comments are believed to address the concerns pointed out by the Examiner regarding the data presented in the present application and the Colby values.

Claims 1-32 were provisionally rejected under the judicially created doctrine of obviousness type double patenting. The present claims are directed to a synergistic herbicidal combination of 4-[2-methyl-3-(4,5-dihydroisoxazol-3-yl)-4-methylsulfonyl-benzoyl]-1-methyl-5-hydroxy-1H-pyrazole; two herbicides selected from the group including imazapyr, imazaquin, imazamethabenz-methyl, imazamox, imazapic and imazethapyr; and a triazine. Applicants respectfully point out that the subject matter of the pending application is not effective but synergistic herbicidal mixtures. It is known in the art that a synergistic effect cannot be predicted from the herbicidal activity of the individual components. Applicants point out that components B and C in the presently claimed invention are different from components B and C in co-pending application no. 10/522,097. Applicants contend that the synergistic effect of the presently claimed herbicidal combination could not have been predicted and therefore would not have

been obvious over claims 1-32 of co-pending application no. 10/522,097. In view of the above amendments and discussion, applicants request that this rejection be withdrawn.

Claims 1, 8, 9, and 15-32 were rejected under 35 USC §103(a) as unpatentable over Sievernich (CA 2,334,955 corresponding to WO99/65314). Applicants respectfully point out that Sievernich does not disclose any quaternary synergistic herbicidal mixtures comprising 4-[2-methyl-3-(4,5-dihydroisoxazol-3-yl)-4-methylsulfonyl-benzoyl]-l-methyl-5-hydroxy-1H-pyrazole; two herbicides selected from the group consisting of imazapyr, imazaquin, imazamethabenz-methyl, imazamox, imazapic and imazethapyr; and a triazine. Though Sievernich discloses 4-[2-methyl-3-(4,5-dihydroisoxazol-3-yl)-4-methylsulfonyl-benzoyl]-l-methyl-5-hydroxy-1H-pyrazole, none of the mixtures disclosed by Sievernich et al. contains two herbicides selected from the group consisting of imazapyr, imazaquin, imazamethabenz-methyl, imazamox, imazapic and imazethapyr as component B) and a triazine as component C). Sievernich provides no indication as to how one might select the inventive components B from the wide range of potential mixing partners and to choose an additional fourth component C which results in a synergistic effect. Thus if one skilled in the art looked for synergistic mixtures other than those exemplified in the reference, at most they would consider mixtures based on the binary and ternary mixtures exemplified in Sievernich. Due to the complex interactions of different active ingredients, there is no reason for one of skill in the art, having a wide selection of synergistically effective binary and ternary mixtures at his disposal, to take a risk with random mixtures from the generic disclosure.

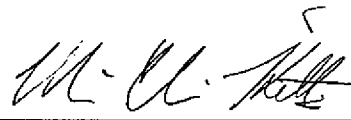
The subject matter of the pending application is not just effective, but also synergistic herbicidal mixtures as demonstrated by the respective experimental data. The Colby-value, which stands for the calculated additive effect [%], has to be compared to the observed effect (damage [%]). The method for determining the Colby value is discussed on pages 35-36 of the present application. E is the value which would be expected if the combination of active ingredients produces only an additive effect. This value is compared to the actual result (Damage [%]) to determine if a synergistic effect is produced. If E is less than the Damage [%], then synergy is occurring. Using table 7 as an example, the Colby value E (i.e. expected result based on an additive effect) is 36 for control of Galium aparine while the Damage [%] is 50. Therefore the combination of the individual components produces a synergistic effect. The Colby value is a prediction of the results of combining individual active ingredients which is why there is no Colby value for the individual components. This data demonstrates that the claimed inventive mixtures result in more than a simply additive effect. These results are surprising and non-obvious in view of the prior art. One of skill in the art would not have guessed or known which of the numerous possible combinations from a generic disclosure or other prior art would show synergistic activity and not detrimental effects. In view of the above amendments and discussion, applicants request that this rejection be withdrawn.

Applicants respectfully submit that all of claims 1, 8, 9, 23 and 26-33 are now in condition for allowance. If it is believed that the application is not in condition for allowance, it is respectfully requested that the undersigned attorney be contacted at the telephone number below.

In the event this paper is not considered to be timely filed, the Applicant respectfully petitions for an appropriate extension of time. Any fee for such an extension together with any additional fees that may be due with respect to this paper, may be charged to Counsel's Deposit Account No. 02-2135.

Respectfully submitted,

By



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